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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

- against -

THE NEW YORK CITY TRANSIT
AUTHORITY,

Defendant.

- - - - -X

CONSENT JUDGMENT

Civil Action
No. CV-97-7521

(Glasser, J.)
(Pollak, M. J.)

CONSENT JUDGMENT

WHEREAS, Plaintiff the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413, seeking civil penalties for violations by the New York City Transit Authority ("NYCTA") of § 112 of the CAA, 42 U.S.C. § 7412, and the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Asbestos, 40 C.F.R. Part 61, Subpart M;

WHEREAS, the United States and the NYCTA agree, and this Court by entering this Consent Judgment finds, that this Consent Judgment has been negotiated by the United States and the NYCTA in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the United States

and the NYCTA, and that this Consent Judgment is fair, reasonable, and in the public interest;

WHEREAS, this Consent Judgment constitutes the final, complete and exclusive agreement and understanding between the United States and the NYCTA with respect to the settlement embodied in this Consent Judgment, and the United States and the NYCTA acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Judgment;

THEREFORE, with the consent of the United States and the NYCTA, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action and the parties pursuant to 28 U.S.C. §§ 1331, 1345 and 1355 and Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) and § 113(b) of the CAA, 42 U.S.C. § 7413(b).

3. The NYCTA consents to and shall not challenge entry of this Consent Judgment or this Court's jurisdiction to enter and enforce this Consent Judgment. Defendant further agrees that the Complaint states claims upon which relief may be granted.

II. PARTIES BOUND

4. This Consent Judgment is binding upon the United States and the NYCTA and its servants, employees, officers, directors, agents, successors and assigns.

5. Any change in ownership or corporate or other legal status of the NYCTA, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the NYCTA under this Consent Judgment.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Consent Judgment that are defined in the CAA or in regulations promulgated thereunder shall have the meaning assigned to them in the CAA and in such regulations. Whenever terms listed below are used in this Consent Judgment, the following definitions shall apply:

a) "CAA" shall mean the Clean Air Act, 42 U.S.C. §§ 7401, et seq.

b) "Complaint" shall mean the complaint filed by the United States of America against the NYCTA in the United States District Court for the Eastern District of New York, entitled United States of America v. The New York City Transit Authority, Civil Action No CV-97-7521 (Glasser, J.).

c) "Consent Judgment" or "Judgment" shall mean this

Consent Judgment.

d) "Day" shall mean a calendar day. In computing any period of time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

e) "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

f) "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States of America.

g) "Interest" shall mean interest at the rate of interest provided for in 28 U.S.C. § 1961. The applicable rate of interest shall be the rate in effect on the day this Consent Judgment is approved and entered by the Court.

h) "NYCTA" shall mean the New York City Transit Authority.

i) "United States" shall mean the United States of America, its departments, agencies and instrumentalities, on behalf of the EPA.

IV. CIVIL PENALTY

7. The NYCTA shall pay to the United States a civil penalty of \$300,000.00 in accordance with the provisions of Paragraph 8, below.

8. Within thirty (30) days of the Court's entry of this Consent Judgment, the NYCTA shall pay to the United States \$300,000.00 by check payable to "United States Treasury" and delivered to the U.S. Attorney's Office, Eastern District of New York. Payment shall reference the full caption of this action, Civil Action No. 97-CV-7521 (E.D.N.Y.), and USAO File No. 9605361. Any funds received by the United States after 4:00 p.m. Eastern Standard Time shall be credited on the next business day. The NYCTA shall notify EPA and DOJ in writing that payment has been made, in accordance with Section VI (Notices and Submissions). This penalty amount is not deductible for federal, state or local tax purposes.

9. In the event that the payment required by this Section is not received when due, Interest shall accrue on the unpaid balance through the date of payment.

V. INJUNCTIVE RELIEF

10. The NYCTA and its successors, transferees and assigns are hereby enjoined from committing violations of 40 C.F.R. Part 61 and the Clean Air Act.

VI. NOTICES AND SUBMISSIONS

11. Unless otherwise provided herein, notifications and submissions to or communications with the EPA or the U.S. Attorney's Office, Eastern District of New York and DOJ shall be deemed submitted on the date they are postmarked and sent either

by overnight receipt mail service or by certified or registered mail, return receipt requested.

12. All notices, submissions, or communications in connection with this Consent Judgment shall be directed to the individuals at the addresses specified below:

As to the United States:

Sandra L. Levy
Assistant U.S. Attorney
U.S. Attorney's Office
Eastern District of New York
One Pierrepont Plaza, 14th Floor
Brooklyn, New York 11201
(718) 254-6014

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

John Dolinar, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region II
290 Broadway, 16th Floor
New York, NY 10007
(212) 637-3201

As to the NYCTA:

Anthony P. Semancik, Esq.
Deputy General Counsel
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017-3739
(212) 878-7248

New York City Transit General Counsel
130 Livingston Plaza
Brooklyn, New York 11201

13. The Parties shall provide each other with written notification of any change in the names or addresses of the individual(s) to whom all notices, submissions and communications should be directed, as set forth in Paragraph 12, above.

14. Any notices, submissions and communications submitted to the United States shall reference the full caption of this action, Civil Action No. 97-CV-7521 (E.D.N.Y.), USAO File No. 9605361, and DJ No. 90-5-2-1-2135.

VII. COSTS OF SUIT

15. Each Party shall bear its own costs, including attorneys' fees.

16. If the United States brings an action to enforce this Consent Judgment, the NYCTA shall reimburse the United States for all costs of such action, including, but not limited to, costs of attorney time.

VIII. CONTINUING JURISDICTION

17. This Court shall retain jurisdiction over the subject matter of this action and the Parties to this Consent Judgment to enforce the terms and conditions of this Consent Judgment and to resolve all disputes arising hereunder as may be necessary for the construction or execution of this Consent Judgment.

IX. GENERAL PROVISIONS

18. Complete performance by the NYCTA of all of its obligations under this Consent Judgment shall fully satisfy all civil liability of the NYCTA for the violations alleged in the Complaint. Nothing in the Consent Judgment shall be construed to resolve any claims, or otherwise affect the NYCTA's liability, with respect to violations of any applicable Federal or State law or regulations, other than the violations specifically alleged in the Complaint. This Consent Judgment does not resolve any claims against the NYCTA for criminal liability.

19. This Consent Judgment shall not relieve the NYCTA of its obligation to comply with all applicable provisions of Federal, State or local law, and with any order of the Court.

20. This Consent Judgment does not limit or affect the rights of the NYCTA or the United States against any third parties and does not create any rights for any third parties.

21. This Consent Judgment constitutes the entire agreement between the Parties. Any modification of this Consent Judgment must be in writing and approved by the Court. Any such written modification must be agreed to and signed by the Parties to this Consent Judgment.

22. The undersigned signatories represent that they are fully authorized to enter into the terms and conditions of this Consent Judgment and to execute and legally bind the party he or she represents to this document.

23. The parties agree and acknowledge that final approval by the United States and entry of this Consent Judgment is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice and an opportunity for public comment. NYCTA consents to the entry of this Consent Judgment without further notice. The United States' consent to the entry of this Consent Judgment is subject to publication of notice thereof in the Federal Register pursuant to 28 C.F.R. § 50.7, and an opportunity to consider comments thereon, prior to requesting that the Court approve this Judgment and enter it as a judgment of the Court.

* * *

The Court finds that this Consent Judgment is a reasonable and fair settlement and adequately protects the public interest in accordance with the CAA. Entered as a final judgment and order of this Court this day of , 2003.

HONORABLE I. LEO GLASSER
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Judgment in the matter of United States of America v. The New York Transit Authority, Civil Action No. 97-CV-7521 (E.D.N.Y.):

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: 9/15/03

BRUCE GELBER
Chief, Environmental Enforcement
Section
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530

Date: 10/6/03

ROSLYNN R. MAUSKOPF
United States Attorney
Eastern District of New York
One Pierrepont Plaza, 14th Floor
Brooklyn, New York 11201

By:

SANDRA L. LEVY
Assistant United States Attorney
One Pierrepont Plaza
Brooklyn, NY 11201
(718) 254-6014/7000

THE UNDERSIGNED PARTY enters into this Consent Judgment in the matter of United States of America v. The New York Transit Authority, Civil Action No. 97-CV-7521 (E.D.N.Y.):

FOR PLAINTIFF UNITED STATES OF AMERICA (cont'd):

Date: 9/24/03

JANE M. KENNY
Regional Administrator
Region II
U.S. Environmental Protection
Agency

Date: 9/22/03

JOHN DOLINAR, ESQ.
Assistant Regional Counsel
Region II
U.S. Environmental Protection
Agency

THE UNDERSIGNED PARTY enters into this Consent Judgment in the matter of United States of America v. The New York Transit Authority, Civil Action No. 97-CV-7521 (E.D.N.Y.):

FOR DEFENDANT THE NEW YORK CITY TRANSIT AUTHORITY:

Date: July 24, 2003

DEBORAH BASS, ESQ.
LEDY, GUREN & BLUMENSTOCK, L.L.P.
Attorneys at Law
475 Park Avenue South
New York, New York 10016
(212) 447-1111

Date: July 25, 2003

ANTHONY P. SEMANCIK
Deputy General Counsel
Metropolitan Transportation
Authority
347 Madison Avenue
New York, NY 10017-3739